

APPEAL NO. 040407
FILED APRIL 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 14, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit period [IIBs] computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

At issue in this case is whether the claimant met the good faith requirement of Section 408.142(a)(4) by complying with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), which states that the good faith criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Whether the claimant satisfied the good faith requirement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance,

materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The hearing officer noted that the claimant failed to provide the required narrative and that he had an ability to work light duty with restrictions during the qualifying period in question, as indicated in the July 10, 2003, report of Dr. C. The fact that an injured employee does not have notice of a release to return to work does not relieve him of the obligation to comply with the good faith requirements for SIBs entitlement. See Texas Workers' Compensation Commission Appeal No. 010782, decided May 30, 2001, and Texas Workers' Compensation Commission Appeal No. 031836, decided September 3, 2003. Nothing in our review of the record indicates that the hearing officer's decision that the claimant is not entitled to SIBs for the first quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **SIERRA INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge